



4520.43-P

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 56 and 57**

**[Docket No. MSHA-2014-0030]**

**RIN 1219-AB87**

**Examinations of Working Places in Metal and Nonmetal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** The Mine Safety and Health Administration is delaying the effective date of the Agency's final rule that amends existing standards for examination of working places in metal and nonmetal mines. The effective date of that rule is extended to October 2, 2017. This extension offers additional time for MSHA to provide stakeholders training and compliance assistance.

**DATES:** The effective date of the rule published January 23, 2017 (82 FR 7680) is delayed to October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at [mcconnell.sheila.a@dol.gov](mailto:mcconnell.sheila.a@dol.gov) (e-mail); 202-693-9440 (voice); or 202-693-9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Delay of Effective Date**

On January 23, 2017, MSHA published a final rule in the Federal Register (82 FR 7680) amending the Agency's standards for the examination of working places in metal and nonmetal mines. The final rule was scheduled to become effective on May 23, 2017.

On March 27, 2017 (82 FR 15173), MSHA published a proposed rule to delay the effective date of the final rule to July 24, 2017. MSHA solicited comments on the limited issue of whether to extend the effective date to July 24, 2017, and whether this extension offered an appropriate length of time for MSHA to provide stakeholders training and compliance assistance. Commenters who supported a delay of the effective date stated that the delay would allow time for the Agency to develop and distribute compliance assistance materials, permit review of the final rule by the President's appointees, and allow for resolution of the legal challenge in the Eleventh Circuit Court of Appeals.

Other commenters supported the 60-day extension saying that a two-month delay is more than adequate for the metal and nonmetal mining community to achieve compliance with the new standard. One commenter did not anticipate any difficulty in implementing the requirements in the final rule. Another commenter noted that a two-month delay is

more than adequate for the mining community to achieve compliance since the final rule made only minor changes to the existing standards.

However, several commenters supported delaying the rule's effective date beyond the proposed date of July 24, 2017, to provide MSHA with sufficient time to complete outreach and compliance assistance activities focused on the final rule's requirements to assure compliance by operators and consistent enforcement by MSHA inspectors. The amount of time commenters suggested for these activities varied significantly.

One commenter recommended an extension of 120 days from the May 23, 2017, effective date to give MSHA sufficient time to fully inform and educate mine operators with online materials and stakeholder education sessions. The commenter stated that, in his state, severe weather events since the January 23, 2017, publication of the final rule hampered MSHA's educational and informational efforts. Specifically, the commenter stated that these weather events had shut down mining operations and washed out roads, making it impossible to reach mine sites and difficult to schedule information meetings in nearby towns. The commenter further stated that extra time afforded by a 120-day extension would allow mine operators and

contractors to implement new systems that are necessary to properly manage the additional paperwork, including the adjustment of examination forms and to fully comply with the additional data retention guidelines. The commenter believed that while larger mining companies would be able to enhance their systems quickly, that may not be the case for small mines with few administrative staff.

Another commenter suggested at least a 6-month extension to November 27, 2017, to give the regulated community time to comply with the final rule. A few commenters supported a longer delay of the effective date: one suggested January 23, 2018, and others suggested May 23, 2018. These commenters stated as reasons for the delay that the rule required new training, revising documents, extra expenses, resources and time.

MSHA agrees that small mines may need additional time to comply with the final rule. Based on data reported to MSHA, nearly 90 percent of metal and nonmetal mines employ fewer than 20 miners. In addition, almost all (98 percent) of MNM mines are surface operations. Over half of all metal and nonmetal mines are surface sand and gravel or crushed stone operations that operate intermittently or seasonally and employ five or fewer miners. Many of these

small mines are in remote locations, making compliance assistance time-consuming for MSHA.

MSHA also agrees with commenters that mine operators, especially small mine operators, will need time to implement recordkeeping systems to comply with the final rule. MSHA understands that large and small mines may need time to adjust schedules and in other ways modify the way they currently do business to comply with the rule. The extension provides an industry which includes over 11,000 mine operators and employs more than 200,000 miners and contractors enough time to effectuate compliance, minimize mine operator recordkeeping burden, and train miners prior to the rule's effective date.

MSHA is developing a variety of compliance assistance materials to assist the industry. The extension provides MSHA the time and flexibility to make these materials available to stakeholders and post them on MSHA's website ([www.msha.gov](http://www.msha.gov)); hold informational stakeholder meetings at various locations around the country; and focus on compliance assistance visits in other areas of the country, as well as assure all issues at these meetings and visits are addressed. Additional time will also allow MSHA to train its inspectors to assure consistent enforcement. MSHA will make the Agency's inspector training materials

available to the mining community to assist miners and mine operators in effectively implementing the rule, thus enhancing the safety of miners.

Several commenters, including labor unions, did not support the proposed extension, stating that the May 2017 date was sufficient for mine operators to comply with the final rule. One stated that the 60-day extension is not justified and is potentially harmful because the final rule made only a few, simple changes to the existing standards which have been in place for 38 years.

As discussed, most metal and nonmetal mines are small operations with limited staff, limited administrative staff, and limited resources, and many are located in remote areas. These small mines may have limited access or no access to the internet at the mine site and may rely on stakeholder meetings and other MSHA in-person services to acquire the knowledge to comply with the rule. MSHA is providing educational, technical, and compliance assistance for affected miners and mine operators. In MSHA's experience with previous changes to metal and nonmetal standards and regulations, outreach to these small mine operators requires MSHA to be flexible regarding different approaches that may be needed and regarding the time

necessary to assure that all miners and mine operators can comply with the rule.

MSHA has concluded that miners' protections are assured when operators and miners are provided needed informational and instructional materials regarding the rule's requirements. The extension of the effective date provides MSHA the flexibility the Agency needs to assure compliance, thereby increasing protections for miners.

## **II. Other Issues**

On March 17, 2017, petitioners filed a Petition for Review of the final Examinations rule in the United States Court of Appeals for the Eleventh Circuit. Some commenters on the proposed rule to delay the effective date requested a stay of the effective date until the completion of this litigation and final adjudication of the validity of the final rule in federal court. One commenter suggested at least a 6-month extension to November 27, 2017, or later to give the court time to issue a decision on the Petition for Review.

Petitioners also filed a "Motion for Emergency Stay" with the Court. On May 3, the Department filed its response to the stay motion.

Other commenters requested a delay until new officials from the current Administration and an Assistant Secretary

appointed by the Administration have an opportunity to conduct a review of the final rule in accordance with the January 20, 2017, memorandum titled "Regulatory Freeze Pending Review" released by the Chief of Staff of the White House. Several commenters also suggested that MSHA delay the effective date indefinitely until the rule's status is finally resolved. MSHA also received several comments objecting to the substantive requirements of the Examinations rule. These comments are outside the scope of the March 27, 2017, proposed rule, which was limited to delaying the rule's effective date to ensure compliance readiness. MSHA is not addressing these comments, as they are beyond the scope of this rulemaking.

### **III. Conclusion**

Having given due consideration to all comments received, MSHA has determined that it is appropriate to delay the effective date until October 2, 2017. As stated, this additional delay will address commenters' concerns regarding sufficient time for MSHA to inform and educate the mining community, including mines that operate intermittently. The extension also affords both large and small mine operators the needed time to implement recordkeeping systems to comply with the final rule. Also, an October 2, 2017, effective date provides more time and



flexibility for MSHA to complete development of compliance assistance materials, make them available to stakeholders, hold informational meetings for stakeholders and conduct compliance assistance visits at metal and nonmetal mines throughout the country. Similarly, further extending the effective date permits more time for MSHA to address issues that may be raised during upcoming stakeholder meetings and compliance assistance visits and to train MSHA inspectors to help assure consistency in MSHA enforcement. MSHA believes that the training and compliance assistance provided to mine operators and miners during the effective date extension will enhance their understanding of the rule's requirements, thereby increasing protections for miners.

Patricia W. Silvey  
*Deputy Assistant Secretary of Labor  
for Mine Safety and Health*

[FR Doc. 2017-10474 Filed: 5/19/2017 8:45 am; Publication Date: 5/22/2017]